

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHELAN COUNTY,
WASHINGTON,

Plaintiff,

v.

BANK OF AMERICA
CORPORATION, a Delaware
corporation; and BANK OF
AMERICA, N.A., a national banking
association,

Defendants.

NO: 2:14-CV-0044-TOR

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Agreed Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

1 disclosure and use extends only to the limited information or items that are entitled
2 to confidential treatment under the applicable legal principles, and it does not
3 presumptively entitle parties to file confidential information under seal.

4 2. "CONFIDENTIAL" MATERIAL

5 "Confidential" material shall include the following documents and tangible
6 things produced or otherwise exchanged: any such information, document, or
7 material that a party reasonably and in good faith believes constitutes or contains
8 trade secret information, personal information, confidential, business proprietary,
9 technical, sales, marketing, financial, or other commercially sensitive information
10 that the party would not disclose to third parties or that it would cause third parties
11 to maintain in confidence, or information otherwise protectable under applicable
12 law.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential
15 material (as defined above), but also (1) any information copied or extracted from
16 confidential material; (2) all copies, excerpts, summaries, or compilations of
17 confidential material; and (3) any testimony, conversations, or presentations by
18 parties or their counsel that might reveal confidential material. However, the
19 protections conferred by this agreement do not cover information that is in the
20 public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation.

Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the
6 duplication of confidential material, provided that counsel for the party retaining
7 the copy or imaging service instructs the service not to disclose any confidential
8 material to third parties and to immediately return all originals and copies of any
9 confidential material;

10 (f) during their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
13 party or ordered by the court. Pages of transcribed deposition testimony or
14 exhibits to depositions that reveal confidential material must be separately bound
15 by the court reporter and may not be disclosed to anyone except as permitted under
16 this agreement;

17 (g) the author or recipient of a document containing the information
18 or a custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or
20 discussing or referencing such material in court filings, the filing party shall confer

1 with the designating party to determine whether the designating party will remove
2 the confidential designation, whether the document can be redacted, or whether a
3 motion to seal or stipulation and proposed order is warranted.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each party or non-party that designates information or items for protection
7 under this agreement must take care to limit any such designation to specific
8 material that qualifies under the appropriate standards. The designating party must
9 designate for protection only those parts of material, documents, items, or oral or
10 written communications that qualify, so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not
12 swept unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited.
14 Designations that are shown to be clearly unjustified or that have been made for an
15 improper purpose (e.g., to unnecessarily encumber or delay the case development
16 process or to impose unnecessary expenses and burdens on other parties) expose
17 the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it
19 designated for protection do not qualify for protection, the designating party must
20 promptly notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
3 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
4 protection under this agreement must be clearly so designated before or when the
5 material is disclosed or produced.

6 (a) Information in documentary form: (e.g., paper or electronic
7 documents and deposition exhibits, but excluding transcripts of depositions or
8 other pretrial or trial proceedings), the designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a
10 portion or portions of the material on a page qualifies for protection, the producing
11 party also must clearly identify the protected portion(s) (e.g., by making
12 appropriate markings in the margins).

13 (b) Testimony given in deposition or in other pretrial or trial
14 proceedings: the parties must identify on the record, during the deposition, hearing,
15 or other proceeding, all protected testimony, without prejudice to their right to so
16 designate other testimony after reviewing the transcript. Any party or non-party
17 may, within fifteen days after receiving a deposition transcript, designate portions
18 of the transcript, or exhibits thereto, as confidential.

19 (c) Other tangible items: the producing party must affix in a
20 prominent place on the exterior of the container or containers in which the

1 information or item is stored the word “CONFIDENTIAL.” If only a portion or
2 portions of the information or item warrant protection, the producing party, to the
3 extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an
5 inadvertent failure to designate qualified information or items does not, standing
6 alone, waive the designating party’s right to secure protection under this agreement
7 for such material. Upon timely correction of a designation, the receiving party
8 must make reasonable efforts to ensure that the material is treated in accordance
9 with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a
13 designating party’s confidentiality designation is necessary to avoid foreseeable,
14 substantial unfairness, unnecessary economic burdens, or a significant disruption
15 or delay of the litigation, a party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any
19 dispute regarding confidential designations without court involvement. Any
20 motion regarding confidential designations or for a protective order must include a

1 certification, in the motion or in a declaration or affidavit, that the movant has
2 engaged in a good faith meet and confer conference with other affected parties in
3 an effort to resolve the dispute without court action. The certification must list the
4 date, manner, and participants to the conference. A good faith effort to confer
5 requires a face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the designating party may file and serve a motion to retain
8 confidentiality under Local Civil Rule 7.1. The burden of persuasion in any such
9 motion shall be on the designating party. Frivolous challenges, and those made for
10 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
11 on other parties) may expose the challenging party to sanctions. All parties shall
12 continue to maintain the material in question as confidential until the court rules on
13 the challenge.

14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
15 IN OTHER LITIGATION

16 If a party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information or items designated in this action as
18 “CONFIDENTIAL,” that party must:

19 (a) promptly notify the designating party in writing and include a copy of
20 the subpoena or court order;

 (b) promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the subpoena
2 or order is subject to this agreement. Such notification shall include a copy of this
3 agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued
5 by the designating party whose confidential material may be affected.

6 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
8 confidential material to any person or in any circumstance not authorized under
9 this agreement, the receiving party must immediately (a) notify in writing the
10 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
11 all unauthorized copies of the protected material, (c) inform the person or persons
12 to whom unauthorized disclosures were made of all the terms of this agreement,
13 and (d) request that such person or persons execute the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL**

17 When a producing party gives notice to receiving parties that certain
18 inadvertently produced material is subject to a claim of privilege or other
19 protection, the obligations of the receiving parties are those set forth in Federal
20 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
whatever procedure may be established in an e-discovery order or agreement that

1 provides for production without prior privilege review. Parties shall confer on an
2 appropriate non-waiver order under Fed. R. Evid. 502.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals,
5 each receiving party must return all confidential material to the producing party,
6 including all copies, extracts and summaries thereof. Alternatively, the parties
7 may agree upon appropriate methods of destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival
9 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
10 correspondence, deposition and trial exhibits, expert reports, attorney work
11 product, and consultant and expert work product, even if such materials contain
12 confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in
14 effect until a designating party agrees otherwise in writing or a court orders
15 otherwise.

16 The District Court Executive is hereby directed to enter this Order and
17 furnish copies to counsel.

18 **DATED** June 23, 2014.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Agreed Protective Order
that was issued by the United States District Court for the Eastern District of
Washington on June 18, 2014, in the case of *Chelan County, Washington v. Bank
of America Corporation and Bank of America, N.A.* I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____